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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/710,646 | 07/27/2004 | Anthony Esposito | 967.081US1 | 4325 |

21186 7590 09/25/2006

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EXAMINER

DODSON, SHELLEY A

ART UNIT PAPER NUMBER

1616

DATE MAILED: 09/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/710,646

Applicant(s)

ESPOSITO ET AL.

Examiner

SHELLEY A. DODSON

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on AMENDMENT FILED AUGUST 17, 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15, 18-20 and 22-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15, 18-20 and 22-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

SHELLEY A. DODSON
PRIMARY EXAMINER

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 8/2006.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

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DETAILED ACTION

Response to Amendment

1.

Applicant's arguments filed August 17, 2006 have been fully considered but they are not deemed to be persuasive. Claims 1-15, 18-20 and 22-25 are now pending in this application.

2.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3.

The rejection of record made under 35 USC 102(b) as being anticipated by Gutierrez et al USP No. 5,871,720 over claims 1-25 is hereby expressly withdrawn.

DOUBLE PATENTING

4.

The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent. In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and In re Goodman, 29 USPQ2d 2010 (Fed. Cir. 1993).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) and (c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5.

Claims 1-15, 18-20 and 22-25 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-17 of copending Application No. 11/157,472. Although the conflicting claims are

not identical, they are not patentably distinct from each other because both the instant application as well as the referenced application are claiming methods for improving the stability of an antiperspirant comprising preparing a blend of propylene glycol, dibenzylidene sorbitol and adding an antiperspirant salt complex with an amino acid salt.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

6.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7.

Claims 1-10, 12-15, 18-20, and 22-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Mattai et al. USP No. 6,338,841.

Mattai et al disclose antiperspirant products with dibenzylidene sorbitol. In column 6, lines 5-25 Mattai further discloses that the antiperspirant further discloses hydroxypropyl cellulose and propylene glycol as the solvent of choice. In column 8, Mattai further discloses that the specific antiperspirant active is an aluminum zirconium tetrachlorohydrate with glycine or zinc glycinate. Mattai further discloses that the process temperatures are above 100° C to ensure good mixing. See all working examples. See lines 34-35 and claim 6 for this embodiment. In column 6, lines 55-65, Mattai discloses that other optional components may also be employed such as fragrances.

Claim Rejections - 35 USC § 103

8.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mattai et al. USP No. 6,338,841 in view of Provancal et al. USP No. 5,643,558.

Mattai et al disclose antiperspirant products with dibenzylidene sorbitol. In column 6, lines 5-25 Mattai further discloses that the antiperspirant further discloses hydroxypropyl cellulose and propylene glycol as the solvent of choice. In column 8, Mattai further discloses that the specific antiperspirant active is an aluminum zirconium tetrachlorohydrate with glycine or zinc glycinate. See lines 34-35 and claim 6 for this embodiment.

Mattai further discloses that the process temperatures are above 100° C to ensure good mixing. See all working examples. In column 6, lines 55-65, Mattai discloses that other optional components may also be employed such as fragrances. Mattai discloses each and every aspect of the invention as claimed by applicant with the exception of the concentration of the propylene glycol being about 65% or greater.

Provancal et al disclose methods of making enhanced antiperspirant actives comprising aluminum zirconium salts and propylene glycols, sorbitols and sodium glycinate. Note column 6. Example 3 discloses that the propylene glycol is 62.7%. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have prepared the antiperspirant products of Mattai employing the amount of propylene glycol of Provancal in view of the teaching of Provancal that said amounts can be varied in antiperspirant products comprising the same active ingredients employed by both references. Additionally, applicant's broad claims have not recitation of amounts and proportions of the propylene glycol which leads the examiner to believe that it is not a critical feature.

Information Disclosure Statement

10.

The information disclosure statement (IDS) submitted was noted and the submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the examiner has considered the information disclosure statement and made it of record.

Telephone Inquiries

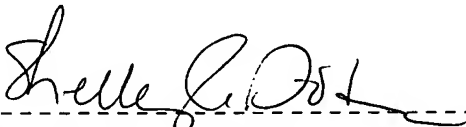
11.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley A. Dodson whose telephone number is (571) 272-0612 and fax number (571) 273-0612. The examiner can normally be reached on Monday-Thursday from 7:30 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached at (571) 272-0646.

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The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. This new location should be used in all instances when faxing any correspondence numbers to Group 1600. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Shelley A. Dodson
Primary Examiner
Art Unit 1616

September 18, 2006